

1 BILL NO. S-82-07-25

2 SPECIAL ORDINANCE NO. S- 144-82

3 AN ORDINANCE amending Chapter 18  
4 of the Municipal Code of the City  
5 of Fort Wayne of 1974 by adding  
6 certain Sections thereto on child  
7 exploitation.

8 WHEREAS, the United States Supreme Court has recently  
9 recognized that the exploitive use of children in pornography  
10 has become a serious national problem; and

11 WHEREAS, the production and distribution of films,  
12 photographs, and other materials depicting sexual activity  
13 by children have been recognized to be intrinsically related  
14 to the sexual abuse of children; and

15 WHEREAS, the City of Fort Wayne has a compelling  
16 governmental interest in safeguarding the physical and  
17 psychological health and well-being of its children; and

18 WHEREAS, the United States Supreme Court has expressly  
19 recognized that the most expeditious, if not the only practical,  
20 method to control and regulate the market for such films,  
21 photographs, and other materials is to impose penalties for  
22 the production, selling, advertising, or other promotion of  
23 such products; and

24 WHEREAS, the City of Fort Wayne strongly desires  
25 to prevent the distribution, promotion, exhibition, sale,  
26 publication, dissemination, or advertisement of such films,  
27 photographs, and other materials within its jurisdiction.

28 NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL  
29 OF THE CITY OF FORT WAYNE, INDIANA:

30 SECTION 1. That Chapter 18 of the Municipal Code  
31 of the City of Fort Wayne of 1974 is hereby amended by adding  
32 thereto the following Sections:

A. Definitions.

2  
3 As used herein, the following definitions  
4 shall apply:

5 1.) "Child" means any person under six-  
6 teen (16) years of age;

7 2.) "Deviate sexual conduct" means an act  
8 of sexual stimulation or gratification involving  
9 a sex organ of one person and the mouth or anus  
10 of another person;

11 3.) "Intentionally" means the desire or  
12 conscious objective to engage in specific  
13 conduct;

14 4.) "Knowingly" means having sufficient  
15 facts and circumstances in one's possession  
16 that one is or should be aware of the character  
17 or content of a performance;

18 5.) "Performance" means any play, motion  
19 picture, photograph, dance, video tape,  
20 slide, or any other photographic presentation  
21 exhibited before an audience or to the public;

22 6.) "Promote" means to create, produce,  
23 direct, procure, manufacture, issue, sell,  
24 give, provide, lend, mail, deliver, transfer,  
25 transmute, publish, transmit, broadcast,  
26 distribute, circulate, disseminate, present,  
27 exhibit, or advertise, or offer or agree to  
28 do the same;

29 7.) "Sexual conduct" means actual or simulated  
30 sexual intercourse, deviate sexual conduct,  
31 sexual bestiality, masturbation, sado-masochistic  
32 abuse, or lewd exhibition of the genitals;

8.) "Sexual performance" means any performance  
or part thereof which includes sexual conduct  
by or involving a child less than sixteen (16)  
years of age;

9.) "Simulated" means the explicit depiction  
of any conduct set forth in the definition of  
sexual conduct in this Ordinance, which creates  
the appearance of sexual conduct and which  
exhibits any uncovered portion of the breasts,  
genitals, or buttocks;

10.) "Sado-masochistic abuse" means flagellation  
or torture by or upon a person as an act of  
sexual stimulation or gratification.

30 B. Prohibited Conduct.

31 It shall be unlawful for any person to:

32 1.) Knowingly or intentionally promote

a sexual performance;

2.) Knowingly or intentionally employ, authorize, induce, or cause a child to engage in or participate in a sexual performance;

3.) Being a parent, legal guardian, custodian, or other person legally charged with the care or custody of a child, knowingly or intentionally permit, consent to or otherwise authorize or allow a child to participate in a sexual performance;

4.) Knowingly or intentionally possess, with intent to promote, any sexual performance.

C. Severability of Provisions.

If any provision or clause of this Ordinance or its application to any person or circumstance, is held or declared to be invalid, void, or unconstitutional, such declaration or holding shall not affect other provisions or applications of this Ordinance, and to this end, the provisions of each Section herein are declared to be severable.

D. Penalty.

A person who violates the provision of this Ordinance will, upon conviction, be fined not more than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00).

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage, any and all necessary approval by the Mayor and the legal publication thereof.

Samuel J. Talarico  
Councilmember

APPROVED AS TO FORM  
AND LEGALITY

Bruce O. Boxberger  
Bruce O. Boxberger, City Attorney

Read the first time in full and on motion by Talarico, seconded by Eastman, and duly adopted, read the second time by title and referred to the Committee Public Safety (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATE: 7-27-82

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Talarico, seconded by Eastman, and duly adopted, placed on its passage. PASSED (Lost) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>8</u>	<u>0</u>	_____	<u>1</u>	_____
<u>BRADBURY</u>	<u>X</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>X</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>X</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>X</u>	_____	_____	_____	_____
<u>NICHOLS</u>	_____	_____	_____	<u>X</u>	_____
<u>SCHMIDT</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>X</u>	_____	_____	_____	_____
<u>STIER</u>	<u>X</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>X</u>	_____	_____	_____	_____

DATE: 8-10-82

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) NO. 1-144-82 on the 10th day of August, 1982.

ATTEST:

(SEAL)

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th day of August, 1982, at the hour of 11:30 o'clock A. M., E.S.T.

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 13th day of August, 1982, at the hour of 10 o'clock A. M., E.S.T.

Win Moses, Jr.  
WIN MOSES, JR. - MAYOR

BILL NO. S-82-07-25

REPORT OF THE COMMITTEE ON PUBLIC RELATIONS

WE, YOUR COMMITTEE ON Public Relations TO WHOM WAS REFERRED AN  
ORDINANCE amending Chapter 18 of the Municipal Code of the City  
of Fort Wayne of 1974 by adding certain Sections thereto on child  
exploitation

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

JAMES S. STIER - ~~CHAIRMAN~~

ROY J. SCHOMBURG - VICE CHAIRMAN

JOHN NUCKOLS

JANET G. BRADBURY

BEN A. EISBART

PAUL M. BURNS

MARK E. GIAQUINTA

DONALD J. SCHMIDT

SAMUEL J. TALARICO - *Chairman*

*for the*  
*Roy J. Schomburg*  
*Janet G. Bradbury*  
*Ben A. Eisbart*  
*Paul M. Burns*  
*Mark E. Giaquinta*

*Samuel J. Talarico*

8-10-82 CONCURRED IN

DATE CHARLES W. WESTERMAN, CITY CL



# The City of Fort Wayne

July 27, 1982

The Honorable Charles W. Westerman  
City Clerk  
City of Fort Wayne, Indiana  
One Main Street  
Fort Wayne, Indiana 46802

Re: Communication to Council - Child Pornography Ordinance

Dear Mr. Westerman:

Please allow this letter to serve as communication to the Common Council of the City of Fort Wayne from my office. As you know, we are submitting a Child Pornography Ordinance entitled:

"An Ordinance amending Chapter 18 of the Municipal Code of the City of Fort Wayne of 1974 by adding certain Sections thereto on child exploitation."

This Ordinance has been drafted in strict conformance with the most recent United States Supreme Court decision which created an exception to First Amendment protections. Based on this case, it is now possible to ban and/or regulate child pornography without first having to prove that such action is obscene. The obscenity test is a much greater test and obscene material must be reviewed in that context. This is not the case with child pornography.

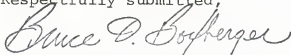
Our Ordinance is a combination of the language used by the United States Supreme Court as well as language from several existing State Statutes.

Our Ordinance does not deal with individuals who take pictures of child pornographic action due to the fact that the State of Indiana has legislated on this subject. This preempts local legislation making it impossible for us to address this issue.

The Honorable Charles W. Westerman  
July 27, 1982  
Page Two

I would be happy to meet with Council and explain the legalities of the Ordinance. Any suggested changes by Council should be carefully scrutinized so that the constitutional integrity of the Ordinance is maintained.

Respectfully submitted,

A handwritten signature in cursive script, reading "Bruce O. Boxberger".

Bruce O. Boxberger  
City Attorney (Corporation Counsel)  
City of Fort Wayne, Indiana

sj



# The City of Fort Wayne

OFFICE OF THE CITY CLERK

Charles W. Westerman, Clerk — Room 122

August 16, 1982

Ms. Linda King  
Fort Wayne Newspapers, Inc.  
600 West Main Street  
Fort Wayne, IN 46802

Dear Ms. King:

Please give the attached full coverage on the dates of August 19 and August 26, 1982, in both the News Sentinel and Journal Gazette.

RE: Legal Notice for Common Council  
of Fort Wayne, Indiana

Bill No. Z-82-07-04  
Zoning Map Ordinance No. Z-17-82

Bill No. Z-82-06-22 (as amended)  
Zoning Map Ordinance No. Z-16-82

Bill No. S-82-07-25  
Special Ordinance No. S-144-82

Bill No. G-82-06-25 (as amended)  
General Ordinance No. G-17-82

Bill No. G-82-07-27 (as amended)  
General Ordinance No. G-18-82

Please send us 20 copies of the Publisher's Affidavit from both newspapers.

Thank you.

Sincerely,

*Charles W. Westerman*  
Charles W. Westerman  
City Clerk

CWW/ne  
ENCL: 1



Fort Wayne Common Council

(Governmental Unit)

Allen

County, Ind.

To JOURNAL-GAZETTE Dr.

FORT WAYNE, INDIANA

## PUBLISHER'S CLAIM

## LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) - number of equivalent lines \_\_\_\_\_

Head number of lines \_\_\_\_\_ 1

Body number of lines \_\_\_\_\_ 120

Tail number of lines \_\_\_\_\_ 2

Total number of lines in notice \_\_\_\_\_ 123

## COMPUTATION OF CHARGES

123 lines, 1 columns wide equals 123 equivalent lines at .300¢ \$36.90  
cents per line

Additional charge for notices containing rule or tabular work (50 per cent of above amount) \_\_\_\_\_

Charge for extra proofs of publication (50 cents for each proof in excess of two) 18 extra 9.00

\$45.90

## DATA FOR COMPUTATION

Width of \_\_\_\_\_ Size of type \_\_\_\_\_ 6 point

Number of \_\_\_\_\_ Size of quad upon which type is cast \_\_\_\_\_ 6

Pursuant to the provision \_\_\_\_\_

I hereby certify that the foregoing has been paid.

that the amount claimed is legally due, after allowing all just credits, and that no part of the same

Date Aug. 26, 1982

Form \_\_\_\_\_

Title \_\_\_\_\_ CLERK

## PUBLISHER'S AFFIDAVIT

I, \_\_\_\_\_  
County SS:

appeared before me, a notary public in and for said county and state, the  
\_\_\_\_\_ ARVILLA DEWALD \_\_\_\_\_ who, being duly sworn, says  
\_\_\_\_\_ CLERK \_\_\_\_\_ of the

## JOURNAL-GAZETTE

## DAILY

\_\_\_\_\_ newspaper of general circulation printed and published  
lish language in the city of FORT WAYNE, INDIANA  
town \_\_\_\_\_

and county aforesaid, and that the printed matter attached hereto is a true copy,  
duly published in said paper for \_\_\_\_\_ two times \_\_\_\_\_ the dates of publication being

8/19 - 8/26/82

and sworn to before me this 26th day of August, 1982

November 29, 1985

Notary Public

Notary Public

## LEGAL NOTICE

Notice is hereby given that on the 10th day of August, 1982, at the Common Council of the City of Fort Wayne, Indiana, in Regular Session did pass the following Bill No. Z-82-07-04 - Zoning Map Ordinance No. Z-17-82; Bill No. S-82-07-25 - Special Ordinance No. S-114-82; Bill No. G-82-06-25 (as amended) - General Ordinance No. G-18-82 - AN ORDINANCE amending the City of Fort Wayne Zoning Map No. L-2.

Notice is hereby given that on the 10th day of August, 1982, at the Common Council of the City of Fort Wayne, Indiana, in Regular Session did pass the following Bill No. Z-82-06-22 (as amended) - Zoning Map Ordinance No. Z-16-82; Bill No. S-82-07-25 - Special Ordinance No. S-114-82; Bill No. G-82-06-25 (as amended) - General Ordinance No. G-18-82 - AN ORDINANCE amending the City of Fort Wayne Zoning Map No. L-2.

Notice is hereby given that on the 10th day of August, 1982, at the Common Council of the City of Fort Wayne, Indiana, in Regular Session did pass the following Bill No. Z-82-07-25 - Special Ordinance No. S-114-82; Bill No. G-82-06-25 (as amended) - General Ordinance No. G-18-82 - AN ORDINANCE amending Chapter 18 of the Municipal Code of the City of Fort Wayne by adding certain Sections thereof on child exploitation.

Notice is hereby given that on the

10th day of August, 1982, at the Common Council of the City of Fort Wayne, Indiana, in Regular Session did pass the following Bill No. G-82-07-27 (as amended) - General Ordinance No. G-18-82 - AN ORDINANCE pertaining to a moratorium on establishment of certain places for the exhibition of films or the dissemination of printed or written material, pictures, drawings, photographs, motion picture and other representations.

Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana do hereby certify that Bill No. Z-82-07-04 Zoning Map Ordinance No. Z-17-82; Bill No. S-82-06-22 (as amended) - Zoning Map Ordinance No. Z-16-82; Bill No. S-82-07-25 - Special Ordinance No. S-114-82; Bill No. G-82-06-25 (as amended) - General Ordinance No. G-18-82 and Bill No. G-82-07-27 (as amended) - General Ordinance No. G-18-82 were passed by the Common Council on the 10th day of August, 1982, and said Ordinances were signed and approved by the Mayor on the 13th day of August, 1982 and remains on file and on record in my office.

Copies of Bill No. Z-82-07-04 - Zoning Map Ordinance No. Z-17-82; Bill No. Z-82-06-22 (as amended) - Zoning Map Ordinance No. Z-16-82; Bill No. S-82-07-25 - Special Ordinance No. S-114-82; Bill No. G-82-06-25 (as amended) - General Ordinance No. G-18-82 and Bill No. G-82-07-27 (as amended) - General Ordinance No. G-18-82 will be posted for reading in the following places in Fort Wayne, Allen County, Indiana.

(1) The main floor of the City-Council Building  
(2) The bulletin board in the lobby of Downtown Fort Wayne Public Library

The bulletin board in the lobby of East door of the Allen County Court House

Copies of Bill No. Z-82-07-04 - Zoning Map Ordinance No. Z-17-82; Bill No. Z-82-06-22 (as amended) - Zoning Map Ordinance No. Z-16-82; Bill No. S-82-07-25 - Special Ordinance No. S-114-82; Bill No. G-82-06-25 (as amended) - General Ordinance No. G-18-82 and Bill No. G-82-07-27 (as amended) - General Ordinance No. G-18-82 will be available for reading in the following places in Fort Wayne, Allen County, Indiana.

(1) The main floor in the north end of the main floor in said Downtown Public Library

(2) The Journal of the Common Council Proceedings in the Office of the City Clerk of Fort Wayne, Indiana

Charles W. Westerman, City Clerk

I, Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana do hereby certify that the above ordinances in the designated places as stated on August 19, 1982.

Charles W. Westerman, City Clerk

8/19-26

Fort Wayne Common Council

To... NEWS SENTINEL ...Dr.

(Governmental Unit)

Allen

County, Ind

FORT WAYNE, INDIANA

## PUBLISHER'S CLAIM

## LINE COUNT

Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) - number of equivalent lines

Head	number of lines	1
Body	number of lines	120
Tail	number of lines	2
Total number of lines in notice		123

## COMPUTATION OF CHARGES

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cents per line

**LEGAL NOTICE**

Notice is hereby given that on the 10th day of August, 1982, at the Common Council of the City of Fort Wayne, Indiana, in Regular Session did pass the following Bill No. Z-82-07-04 - Zoning Map Ordinance No. Z-17-82 - AN ORDINANCE amending the City of Fort Wayne Zoning Map No. L-2.

Notice is hereby given that on the 10th day of August, 1982, at the Common Council of the City of Fort Wayne, Indiana, in Regular Session did pass the following Bill No. Z-82-06-22 (as amended) - Zoning Map Ordinance No. Z-16-82 - AN ORDINANCE amending the City of Fort Wayne Zoning Map No. L-2.

Notice is hereby given that on the 10th day of August, 1982, at the Common Council of the City of Fort Wayne, Indiana, in Regular Session did pass the following Bill No. G-82-06-25 (as amended) - General Ordinance No. G-17-82 - AN ORDINANCE amending Chapter 33 of the Municipal Code of the City of Fort Wayne, Indiana.

Notice is hereby given that on the 10th day of August, 1982, at the Common Council of the City of Fort Wayne, Indiana, in Regular Session did pass the following Bill No. S-82-07-25 - Special Ordinance No. S-114-82 - AN ORDINANCE amending Chapter 18 of the Municipal Code of the City of Fort Wayne of 1974 by adding certain Sections hereto on child exploitation.

Notice is hereby given that on the 10th day of August, 1982, at the Common Council of the City of Fort Wayne, Indiana, in Regular Session did pass the following Bill No. G-82-07-27 (as amended) - General Ordinance No. G-18-82 - AN ORDINANCE pertaining to a moratorium on establishment of certain places for the exhibition of films or the dissemination of printed or photographic material, pictures, drawings, photographs, motion picture and other representations.

Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana, do hereby certify that Bill No. Z-82-07-04 - Zoning Map Ordinance No. Z-17-82, Bill No. Z-82-07-25 - Special Ordinance No. S-114-82, Bill No. G-82-06-25 (as amended) - General Ordinance No. G-17-82 and Bill No. S-82-07-27 (as amended) - General Ordinance No. S-114-82 were passed by the Common Council on the 10th day of August, 1982, and said Ordinances were signed and approved by the Mayor on the 13th day of August, 1982, and are on file and on record in my office.

Copies of Bill No. Z-82-07-04 - Zoning Map Ordinance No. Z-17-82; Bill No. Z-82-06-22 (as amended) - Zoning Map Ordinance No. Z-16-82; Bill No. S-82-07-25 - Special Ordinance No. S-114-82; Bill No. G-82-06-25 (as amended) - General Ordinance No. G-17-82 and Bill No. S-82-07-27 (as amended) - General Ordinance No. S-114-82 will be posted for reading in the following places in Fort Wayne, Allen County, Indiana:

- (1) The main floor of the City-County Building
- (2) The bulletin board in the lobby of Downtown Fort Wayne Public Library
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Copies of Bill No. Z-82-07-04 - Zoning Map Ordinance No. Z-17-82; Bill No. Z-82-06-22 (as amended) - Zoning Map Ordinance No. Z-16-82; Bill No. S-82-07-25 - Special Ordinance No. S-114-82; Bill No. G-82-06-25 (as amended) - General Ordinance No. G-17-82 and Bill No. S-82-07-27 (as amended) - General Ordinance No. S-114-82 will be available for reading in the following places in Fort Wayne, Allen County, Indiana:

- (1) Restroom Room in the north end of the main floor in said Downtown Public Library
- (2) The Journal of the Common Council Proceedings in the Office of the City Clerk of Fort Wayne, Indiana

Charles W. Westerman  
City Clerk  
I, Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana, fulfilled and posted the above ordinances in the designated places as stated on August 19, 1982.  
Charles W. Westerman  
City Clerk

8/19-28

Size of type ..... 6 ..... point

Size of quad upon which type is cast ..... 6 ..... point

of Ch. 89, Acts 1967.

Amount is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same

*D. Roose*

Title..... CLERK

**PUBLISHER'S AFFIDAVIT**

State of Indiana  
ALLEN COUNTY SS.

Personally appeared before me, a notary public in and for said county and state, the undersigned..... D. ROOSE ..... who, being duly sworn, says that she is..... CLERK ..... of the

**NEWS SENTINEL**

a..... DAILY ..... newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANA town of

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for two times, the dates of publication being as follows:

8/19 - 8/26/82

Subscribed and sworn to before me this 26th day of August 1982

*Anne M. Perkins*  
Notary Public

My commission expires November 29, 1985



Fort Wayne Common Council

(Governmental Unit)

To NEWS-SENTINEL Dr.

Allen

County, Ind

FORT WAYNE, INDIANA

## PUBLISHER'S CLAIM

## LINE COUNT

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Total number of lines in notice

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## COMPUTATION OF CHARGES

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cents per line

Additional charge for notices containing rule or tabular work (50 per cent of above amount)

Charge for extra proofs of publication (50 cents for each proof in excess of two) 18 extra 9.00

TOTAL AMOUNT OF CLAIM.

\$45.90

## DATA FOR COMPUTING COST

Width of single column 9.6 picas

Size of type 6 point

Number of insertions 2

Size of quad upon which type is cast 6

Pursuant to the provision and penalties of Ch. 89., Acts 1967.

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

*D. Roose*

Date Aug. 26 19 82

Title CLERK

Form 903

## PUBLISHER'S AFFIDAVIT

State of Indiana  
ALLEN County SS:Personally appeared before me, a notary public in and for said county and state, the undersigned D. ROOSE who, being duly sworn, says that she is CLERK of theNEWS-SENTINELa DAILY newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANA townin state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for two times the dates of publication being as follows:

8/19 - 8/26/82

Subscribed and sworn to before me this 26th day of August 19 82*D. Roose*  
*Anne M. Perkins*  
Notary PublicMy commission expires November 29, 1985